

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, ss.

TRIAL COURT DEPARTMENT
NANTUCKET DISTRICT COURT
DOCKET NO. 1888 CR 0598

COMMONWEALTH OF MASSACHUSETTS

VS.

KEVIN S. FOWLER

MAR 08 2019

SUMMONSING ORDER

Pursuant to Mass.R.Crim.P. 17(a)(2), Defendant has filed several requests for pretrial discovery of documents, recordings, and objects. The court declines to rule on the production of those items absent prior notice to the owner(s) and an opportunity to be heard. *Commonwealth v. Matis*, 446 Mass. 632 (2006).

Request to Joseph Pantorno

As to Defendant's motion directed to Joseph Pantorno, the motion is withdrawn as Pantorno is deceased.¹

Request to Nantucket Club Car, LLC

The court declines, without further argument from the defendant, to order Nantucket Club Car, LLC ("Club Car") to respond to Defendant's request for records of credit card transactions, other non-cash transaction and employment records for the night of the alleged incident. These records will, according to the defendant, "lead to the identification of possible" or "potential percipient witnesses." Without deciding the issue, this court notes that the Supreme Judicial Court has "emphasized, rule 17(a)(2) is not a discovery tool to be 'invoked merely for the exploration of potential evidence.' Rather, its purpose is 'to expedite trial proceedings and to avoid delays caused when counsel must inspect or examine documents or objects produced in response to a summons.' To

¹ The motion may be refiled once a representative of the estate is appointed. The court takes note of the suggestion of the defendant that Pantorno did not voluntarily turn over sought evidence "based on law enforcement's request alone." The commonwealth or its agents may advise an alleged victim of his or her rights vis-à-vis a defendant's request for information. It may not direct a person not to cooperate.

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that end, '[p]otential relevance and conclusory statements regarding relevance are insufficient' to meet the rule 17 standard." [Citations omitted.] *Commonwealth v. Sealy*, 467 Mass. 617 (2014). Further, the records sought would not appear to be of an evidentiary nature. At best, they may lead to the discovery of admissible evidence. But again, that's not the *Lampron* standard. *Commonwealth v. Lampron*, 441 Mass. 265 (2004).

The court does order notice be sent to Nantucket Club Car, LLC of Defendant's request for production and examination of any surveillance footage in Club Car's possession, taken within the Club Car restaurant and/or bar between July 7, 2016 at 5:00 PM and July 8, 2016 at 3:00 AM. The court will rule upon that request after its April 4, 2019 hearing, at which Nantucket Club Car, LLC is to appear if there is objection to the request.

Request to Law Offices of Mitchel Garabedian

The court has considered the defendant's request directed to The Law Offices of Mitchell Garabedian but will await further argument from the defendant before ruling. The court recognizes a defendant's right to impeach an alleged victim with claims of bias and motive to lie and that such evidence is not collateral. *Commonwealth v. Hall*, 50 Mass.App.Ct. 208, 213 n.7 (2000). However, the right is not without limitation. The court notes that to the extent the defendant is requesting information that Garabedian has turned over to the commonwealth, the obligations of the commonwealth under Mass.R.Crim.P. 14 to share that information with defendant, as well as Defendant's ability to cross-examine the alleged victim on these issues, may vindicate Defendant's right to present an effective defense.

Request to [REDACTED]

As to the alleged victim's cell phone, the court previously entered a preservation order. However, it does not appear that the alleged victim was given notice of the request now made by the defendant. The court orders notice be sent to the alleged victim of Defendant's request for the production and examination of the alleged victim's cell phone, cloud-based accounts and passwords. The court will rule upon that request after its April 4, 2019 hearing, at which the alleged victim, or his counsel, is to appear if there is an objection to the request.

So Ordered

Dated: March 7, 2019

Thomas S. Barrett, Justice

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